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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.
 INC, individually and on behalf of all)
 others similarly situated,)

Plaintiff,)

vs.)

AFG FUNDING, LLC; and DOES 1)
 through 10, inclusive,)
 Defendant.)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
 OF:**

1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
 individually and on behalf of all others similarly situated, alleges the following

upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of AFG FUNDING, LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a California corporation with its principle place of business also in California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a Floridaa company. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business within the State of California and Plaintiff resides within the County of Alameda.

PARTIES

4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), is a rooting and plumbing business in Emeryville, California and is a “person” as defined by 47 U.S.C. § 153 (39).

5. Defendant, AFG FUNDING, LLC (“AFG”), is an entity in the

1 business finance industry, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

2 6. The above named Defendant, and its subsidiaries and agents, are
3 collectively referred to as “Defendants.” The true names and capacities of the
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
6 names. Each of the Defendants designated herein as a DOE is legally responsible
7 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend
8 the Complaint to reflect the true names and capacities of the DOE Defendants
9 when such identities become known.

10 7. Plaintiff is informed and believes that at all relevant times, each and
11 every Defendant was acting as an agent and/or employee of each of the other
12 Defendants and was acting within the course and scope of said agency and/or
13 employment with the full knowledge and consent of each of the other Defendants.
14 Plaintiff is informed and believes that each of the acts and/or omissions
15 complained of herein was made known to, and ratified by, each of the other
16 Defendants.

17 **FACTUAL ALLEGATIONS**

18 8. Beginning in or around April of 2018, Defendant contacted Plaintiff
19 on Plaintiff’s cellular telephone numbers ending in -1080 in an attempt to solicit
20 Plaintiff to purchase Defendant’s services.

21 9. Defendant used an “automatic telephone dialing system” as defined
22 by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to solicit its
23 services.

24 10. Defendant contacted or attempted to contact Plaintiff from telephone
25 numbers belonging to Defendant, including without limitation (702) 359-7688.

26 11. On April 4, 2018, Plaintiff was called by Defendant’s representative
27 to solicit Plaintiff to purchase Defendant’s services. Defendant’s representative
28 then transferred Plaintiff to a recording. Thereafter, Defendant’s CEO called

1 Plaintiff back from his cell phone to solicit Plaintiff to purchase Defendant's
2 services.

3 12. Defendant's calls constituted calls that were not for emergency
4 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

5 13. Defendant's calls were placed to telephone number assigned to a
6 cellular telephone service for which Plaintiff incurs a charge for incoming calls
7 pursuant to 47 U.S.C. § 227(b)(1).

8 14. During all relevant times, Defendant did not possess Plaintiff's
9 "prior express consent" to receive calls using an automatic telephone dialing
10 system or an artificial or prerecorded voice on its cellular telephones pursuant to
11 47 U.S.C. § 227(b)(1)(A).

12 15. Furthermore, Plaintiff's cellular telephone numbers ending in -1080
13 have been on the National Do-Not-Call Registry well over thirty (30) days prior
14 to Defendant's initial calls.

15 16. Defendant placed multiple calls soliciting its business to Plaintiff on
16 its cellular telephones beginning in or around April of 2018.

17 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
18 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

19 18. Plaintiff received numerous solicitation calls from Defendant within
20 a 12-month period.

21 19. Defendant continued to call Plaintiff in an attempt to solicit its
22 services and in violation of the National Do-Not-Call provisions of the TCPA.

23 20. Upon information and belief, and based on Plaintiff's experiences of
24 being called by Defendant, and at all relevant times, Defendant failed to establish
25 and implement reasonable practices and procedures to effectively prevent
26 telephone solicitations in violation of the regulations prescribed under 47 U.S.C.
27 § 227(c)(5).

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CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

23. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who

1 received more than one call made by or on behalf of
2 Defendant that promoted Defendant's products or
3 services, within any twelve-month period, within four
4 years prior to the filing of the complaint.

5 24. The class concerning the National Do-Not-Call violation following
6 revocation of consent and prior business relationship, to the extent they existed
(hereafter "The DNC Revocation Class") is defined as follows:

7 All persons within the United States registered on the
8 National Do-Not-Call Registry for at least 30 days, who
9 received more than one call made by or on behalf of
10 Defendant that promoted Defendant's products or
11 services, after having revoked consent and any prior
12 established business relationship, within any twelve-
13 month period, within four years prior to the filing of the
14 complaint.

15 25. Plaintiff represents, and is a member of, The ATDS Class, consisting
16 of all persons within the United States who received any solicitation telephone
17 calls from Defendant to said person's cellular telephone made through the use of
18 any automatic telephone dialing system or an artificial or prerecorded voice and
19 such person had not previously not provided their cellular telephone number to
20 Defendant within the four years prior to the filing of this Complaint.

21 26. Plaintiff represents, and is a member of, The ATDS Revocation
22 Class, consisting of all persons within the United States who received any
23 solicitation/telemarketing telephone calls from Defendant to said person's cellular
24 telephone made through the use of any automatic telephone dialing system or an
25 artificial or prerecorded voice and such person had revoked any prior express
26 consent to receive such calls prior to the calls within the four years prior to the
27 filing of this Complaint.

28 27. Plaintiff represents, and is a member of, The DNC Class, consisting
of all persons within the United States registered on the National Do-Not-Call

1 Registry for at least 30 days, who had not granted Defendant prior express
2 consent nor had a prior established business relationship, who received more than
3 one call made by or on behalf of Defendant that promoted Defendant's products
4 or services, within any twelve-month period, within four years prior to the filing
5 of the complaint.

6 28. Plaintiff represents, and is a member of, The DNC Revocation Class,
7 consisting of all persons within the United States registered on the National Do-
8 Not-Call Registry for at least 30 days, who received more than one call made by
9 or on behalf of Defendant that promoted Defendant's products or services, after
10 having revoked consent and any prior established business relationship, within
11 any twelve-month period, within four years prior to the filing of the complaint.

12 29. Defendant, their employees and agents are excluded from The
13 Classes. Plaintiff does not know the number of members in The Classes, but
14 believes the Classes members number in the thousands, if not more. Thus, this
15 matter should be certified as a Class Action to assist in the expeditious litigation
16 of the matter.

17 30. The Classes are so numerous that the individual joinder of all of its
18 members is impractical. While the exact number and identities of The Classes
19 members are unknown to Plaintiff at this time and can only be ascertained
20 through appropriate discovery, Plaintiff is informed and believes and thereon
21 alleges that The Classes includes thousands of members. Plaintiff alleges that
22 The Classes members may be ascertained by the records maintained by
23 Defendant.

24 31. Plaintiff and members of The ATDS Class and The ATDS
25 Revocation Class were harmed by the acts of Defendant in at least the following
26 ways: Defendant illegally contacted Plaintiff and ATDS Class members via their
27 cellular telephones thereby causing Plaintiff and ATDS Class and ATDS
28 Revocation Class members to incur certain charges or reduced telephone time for

1 which Plaintiff and ATDS Class and ATDS Revocation Class members had
2 previously paid by having to retrieve or administer messages left by Defendant
3 during those illegal calls, and invading the privacy of said Plaintiff and ATDS
4 Class and ATDS Revocation Class members.

5 32. Common questions of fact and law exist as to all members of The
6 ATDS Class which predominate over any questions affecting only individual
7 members of The ATDS Class. These common legal and factual questions, which
8 do not vary between ATDS Class members, and which may be determined
9 without reference to the individual circumstances of any ATDS Class members,
10 include, but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendant made any telemarketing/solicitation call
13 (other than a call made for emergency purposes or made with
14 the prior express consent of the called party) to a ATDS Class
15 member using any automatic telephone dialing system or any
16 artificial or prerecorded voice to any telephone number
17 assigned to a cellular telephone service;
- 18 b. Whether Plaintiff and the ATDS Class members were
19 damaged thereby, and the extent of damages for such
20 violation; and
- 21 c. Whether Defendant and their agents should be enjoined from
22 engaging in such conduct in the future.

23 33. As a person that received numerous telemarketing/solicitation calls
24 from Defendant using an automatic telephone dialing system or an artificial or
25 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
26 claims that are typical of The ATDS Class.

27 34. Common questions of fact and law exist as to all members of The
28 ATDS Revocation Class which predominate over any questions affecting only

1 individual members of The ATDS Revocation Class. These common legal and
2 factual questions, which do not vary between ATDS Revocation Class members,
3 and which may be determined without reference to the individual circumstances
4 of any ATDS Revocation Class members, include, but are not limited to, the
5 following:

- 6 a. Whether, within the four years prior to the filing of this
7 Complaint, Defendant made any telemarketing/solicitation call
8 (other than a call made for emergency purposes or made with
9 the prior express consent of the called party) to an ATDS
10 Revocation Class member, who had revoked any prior express
11 consent to be called using an ATDS, using any automatic
12 telephone dialing system or any artificial or prerecorded voice
13 to any telephone number assigned to a cellular telephone
14 service;
- 15 b. Whether Plaintiff and the ATDS Revocation Class members
16 were damaged thereby, and the extent of damages for such
17 violation; and
- 18 c. Whether Defendant and their agents should be enjoined from
19 engaging in such conduct in the future.

20 35. As a person that received numerous telemarketing/solicitation calls
21 from Defendant using an automatic telephone dialing system or an artificial or
22 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff
23 is asserting claims that are typical of The ATDS Revocation Class.

24 36. Plaintiff and members of The DNC Class and DNC Revocation
25 Class were harmed by the acts of Defendant in at least the following ways:
26 Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation
27 Class members via their telephones for solicitation purposes, thereby invading the
28 privacy of said Plaintiff and the DNC Class and DNC Revocation Class members

1 whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff
2 and the DNC Class and DNC Revocation Class members were damaged thereby.

3 37. Common questions of fact and law exist as to all members of The
4 DNC Class which predominate over any questions affecting only individual
5 members of The DNC Class. These common legal and factual questions, which
6 do not vary between DNC Class members, and which may be determined without
7 reference to the individual circumstances of any DNC Class members, include,
8 but are not limited to, the following:

- 9 a. Whether, within the four years prior to the filing of this
10 Complaint, Defendant or its agents placed more than one
11 solicitation call to the members of the DNC Class whose
12 telephone numbers were on the National Do-Not-Call Registry
13 and who had not granted prior express consent to Defendant
14 and did not have an established business relationship with
15 Defendant;
- 16 b. Whether Defendant obtained prior express written consent to
17 place solicitation calls to Plaintiff or the DNC Class members'
18 telephones;
- 19 c. Whether Plaintiff and the DNC Class member were damaged
20 thereby, and the extent of damages for such violation; and
- 21 d. Whether Defendant and their agents should be enjoined from
22 engaging in such conduct in the future.

23 38. As a person that received numerous solicitation calls from Defendant
24 within a 12-month period, who had not granted Defendant prior express consent
25 and did not have an established business relationship with Defendant, Plaintiff is
26 asserting claims that are typical of the DNC Class.

27 39. Common questions of fact and law exist as to all members of The
28 DNC Class which predominate over any questions affecting only individual

1 members of The DNC Revocation Class. These common legal and factual
2 questions, which do not vary between DNC Revocation Class members, and
3 which may be determined without reference to the individual circumstances of
4 any DNC Revocation Class members, include, but are not limited to, the
5 following:

- 6 a. Whether, within the four years prior to the filing of this
7 Complaint, Defendant or its agents placed more than one
8 solicitation call to the members of the DNC Class whose
9 telephone numbers were on the National Do-Not-Call Registry
10 and who had revoked any prior express consent and any
11 established business relationship with Defendant;
- 12 b. Whether Plaintiff and the DNC Class member were damaged
13 thereby, and the extent of damages for such violation; and
- 14 c. Whether Defendant and their agents should be enjoined from
15 engaging in such conduct in the future.

16 40. As a person that received numerous solicitation calls from Defendant
17 within a 12-month period, who, to the extent one existed, had revoked any prior
18 express consent and any established business relationship with Defendant,
19 Plaintiff is asserting claims that are typical of the DNC Revocation Class.

20 41. Plaintiff will fairly and adequately protect the interests of the
21 members of The Classes. Plaintiff has retained attorneys experienced in the
22 prosecution of class actions.

23 42. A class action is superior to other available methods of fair and
24 efficient adjudication of this controversy, since individual litigation of the claims
25 of all Classes members is impracticable. Even if every Classes member could
26 afford individual litigation, the court system could not. It would be unduly
27 burdensome to the courts in which individual litigation of numerous issues would
28 proceed. Individualized litigation would also present the potential for varying,

inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

43. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

44. Defendant have acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

45. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-44.

46. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

48. Plaintiff and the ATDS Class and ATDS Revocation Class members

are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

49. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-48.

50. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

51. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

52. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

53. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-52.

54. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each

1 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in
 2 particular *47 U.S.C. § 227 (c)(5)*.

3 55. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
 4 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an
 5 award of \$500.00 in statutory damages, for each and every violation, pursuant to
 6 *47 U.S.C. § 227(c)(5)(B)*.

7 56. Plaintiff and the DNC Class and DNC Revocation Class members
 8 are also entitled to and seek injunctive relief prohibiting such conduct in the
 9 future.

10 **FOURTH CAUSE OF ACTION**

11 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

12 **Act**

13 **47 U.S.C. §227 et seq.**

14 **On Behalf of the DNC Class and DNC Revocation Class**

15 57. Plaintiff repeats and incorporates by reference into this cause of
 16 action the allegations set forth above at Paragraphs 1-56.

17 58. The foregoing acts and omissions of Defendant constitute numerous
 18 and multiple knowing and/or willful violations of the TCPA, including but not
 19 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
 20 in particular *47 U.S.C. § 227 (c)(5)*.

21 59. As a result of Defendant's knowing and/or willful violations of *47*
 22 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class
 23 members are entitled an award of \$1,500.00 in statutory damages, for each and
 24 every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

25 60. Plaintiff and the DNC Class and DNC Revocation Class members
 26 are also entitled to and seek injunctive relief prohibiting such conduct in the
 27 future.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class

members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).

- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

61. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 12th Day of November, 2019.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff